

1 UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
3

4 UNITED STATES OF AMERICA, )  
 )  
5 Plaintiff, ) No. 14-CR-0471-WQH  
 )  
6 v. ) October 17, 2014  
 )  
7 SHANE TRAVIS MASSA, ) 2:00 p.m.  
 )  
8 Defendant. ) San Diego, California  
 )  
9 \_\_\_\_\_

10 TRANSCRIPT OF RESTITUTION HEARING  
11 BEFORE THE HONORABLE WILLIAM Q. HAYES  
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 For the Plaintiff: United States Attorney's Office  
15 By: ALESSANDRA SERANO, ESQ.  
880 Front Street, Room 6293  
San Diego, California 92101

16 For the Defendant: Federal Defenders of San Diego, Inc.  
17 By: MICHELLE BETANCOURT, ESQ.  
225 Broadway, 9th floor  
18 San Diego, California 92101

19  
20  
21  
22 Court Reporter: Melinda S. Setterman, RPR, CRR  
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1 SAN DIEGO, CALIFORNIA, OCTOBER 17, 2014, 2:00 P.M.

2 \* \* \* \*

3 THE CLERK: Number four, case 14-CR-471, United States  
4 of America vs Shane Travis Massa, on for status hearing.

02:02 5 MS. SERANO: Good afternoon, Your Honor. Alessandra  
6 Serano on behalf of the United States.

7 THE COURT: Good afternoon.

8 MS. BETANCOURT: Good afternoon, Michelle Betancourt  
9 on behalf of Mr. Massa, who is present in court in custody.

02:02 10 THE COURT: Good afternoon.

11 I reviewed the papers that the parties have filed.

12 And, Ms. Betancourt, is it fair to say that you are  
13 not requesting an evidentiary hearing?

14 MS. BETANCOURT: That's correct, Your Honor. I am  
02:02 15 not.

16 THE COURT: All right. Is there anything -- and with  
17 respect to the Government papers, is it fair to say -- I don't  
18 think this is written in the papers; you may have mentioned it  
19 the last time you were here, and Ms. Betancourt refers to it --  
02:02 20 are you seeking 5,000 for each of the four victims?

21 MS. SERANO: Yes, sir. I believe that is in my  
22 initial pleading, Document Number 35.

23 MS. BETANCOURT: You didn't specify.

24 MS. SERANO: Oh, I didn't -- Ms. Betancourt refreshes  
02:03 25 my memory. I did say 5,000 at the last hearing.

1 THE COURT: I don't think that I -- you didn't say  
2 anything in Document 35 is why I brought it up, and my is  
3 understanding you orally responded at some point in the hearing  
4 that it would be 5,000 per victim, and Ms. Betancourt  
02:03 5 referenced that you said 5,000, but I didn't see it in a  
6 written pleading and --

7 MS. SERANO: That's correct, and my apologies.

8 THE COURT: That's all right. Anything that you would  
9 like to add to your papers, Ms. Betancourt?

02:03 10 MS. BETANCOURT: No, Your Honor. The only thing I  
11 would like to add is -- I guess the answer is yes, Your Honor.  
12 I apologize. I used a deviser of 1,000, and I came up with  
13 that number because there are a number of restitution claims --  
14 or restitution orders that have already been submitted for each  
02:03 15 of the claimants.

16 And then as Paroline indicates that the Court is to  
17 consider -- another factor to consider is any future defendants  
18 that are to come, so I used that number. The Court can  
19 obviously choose to use any deviser or not use a deviser and  
02:04 20 figure out the calculation another way.

21 Another number that can be used is a number that I  
22 tried to figure out myself but I couldn't but is accessible to  
23 the Government through the Department of Justice as to how many  
24 restitution orders have been ordered for each of the -- of the  
02:04 25 claimants or the victims here. That is a number I couldn't

1 figure out to suggest otherwise to the Court to use as  
2 potential deviser as to each of the claimants.

3 I don't know if that is something that the Court would  
4 want to inquire from the Government. That seems to be  
02:04 5 something that can be used, and that would be from the  
6 Department of Child -- Department of Justice, Child and  
7 Exploitation Obscenity Section. They seem to keep numbers of  
8 how many outstanding restitution orders have been ordered as to  
9 each victim.

02:04 10 That is just the information that is not in our  
11 papers, and I tried to figure out how I can get that number.  
12 In just look at other cases that has been referenced, for  
13 example, for another victim that is not named in our case,  
14 Vickie, but I didn't know if that is something that the Court  
02:05 15 wanted to inquire of the Government potentially that would  
16 influence the deviser used.

17 THE COURT: Ms. Serano.

18 MS. SERANO: Your Honor, the Child Exploitation and  
19 Obscenity Section keeps track based on self-reporting by AUSAs,  
02:05 20 so for example, if Your Honor orders restitution here today,  
21 then I will self-report to the Child Exploitation Obscenity  
22 Section the name of the case, the charge the defendant pled to,  
23 and the amount of restitution.

24 So they do track it, but again, it is based on  
02:05 25 self-reporting, so it would not necessarily be inclusive. It

1 would also not include any state court judgments. Because if  
2 there is any state court judge that has ordered restitution,  
3 that would not be tracked by the US Department of Justice.

4 So, yes, there is a -- there is information, but it  
02:06 5 wouldn't necessarily be 100 percent accurate.

6 THE COURT: All right. I think I have seen it in  
7 another case, I may have seen it in a case this morning, where  
8 I've seen the references to the amount of restitution orders.  
9 I understand that it may -- it is only going to include those  
02:06 10 that were self-reported. It is not going to include state and  
11 may not include others, but to the extent that the Government  
12 can submit that information with respect to the four people  
13 that are seeking restitution, it might be helpful.

14 And so can you -- can you call them and ask them what  
02:06 15 the number is?

16 MS. SERANO: It is something that I can go on line and  
17 figure out from the computer.

18 THE COURT: Can you figure out --

19 MS. SERANO: It would only be valid and accurate as of  
02:06 20 today.

21 THE COURT: I understand. And to the extent that the  
22 record has more -- as much information as theoretically that it  
23 can have and to the extent that you can provide that  
24 information, just put it in a pleading and file it in a week.  
02:07 25 Does that work?

1 MS. SERANO: That's fine.

2 THE COURT: Okay. Anything else?

3 MS. BETANCOURT: No, Your Honor. I think in -- again,  
4 I apologize. I tried to explain in my motion to shorten  
02:07 5 time -- I do apologize for my late briefing. I think the Court  
6 probably wanted to have this resolved today, and so I do -- I  
7 apologize for that.

8 I think I outlined my requests to the Court and how  
9 the total losses should be reduced to adequately cover what the  
02:07 10 losses are from the continuing traffic of the images and not  
11 the initial abuse that was suffered by each of the victims that  
12 we do not dispute whatsoever, and we're not requesting an  
13 evidentiary hearing, but a lot of that predates Mr. Massa and  
14 is not necessarily as a result of the continuing traffic of the  
02:07 15 images.

16 THE COURT: Is there anything you wish to add,  
17 Ms. Serano, on the restitution issue?

18 MS. SERANO: I don't think that just because an amount  
19 of restitution has been ordered is necessarily -- it might be  
02:08 20 interesting, it might be remotely helpful, just generally to  
21 the Court, but it doesn't reflect the amount that was actually  
22 collected. If we were looking at this as a finite number --  
23 and I'll admit that these types -- this type of offense dealing  
24 with restitution it is a number that is constantly changing  
02:08 25 because it is not like an oil spill or something where it is

1 just a one-time event and people are harmed. It is constantly  
2 evolving.

3 I don't know the amount that has actually been  
4 collected, and I don't know how helpful or relevant the amount  
02:08 5 of the orders will be helpful. I mean, for example, if one of  
6 the victims has a half million dollars in restitution ordered,  
7 that should have no bearing because it hasn't been collected  
8 necessarily.

9 I am happy to provide the information to the Court  
02:08 10 within a week. It is not a problem. I can even do it close of  
11 business Monday. This will take me about five minutes to do  
12 based on the information that is available now.

13 THE COURT: All right. Well, just submit the  
14 information. I understand -- do you want to make any comments  
02:09 15 in response to Ms. Betancourt's pleading or what her views are  
16 as to what the restitution should be?

17 As I understand it, the Government's position is 5,000  
18 with respect to the four victims; is that correct?

19 MS. SERANO: Yes, sir.

02:09 20 THE COURT: Is there anything you would like to add in  
21 response to Ms. Betancourt's arguments or any other arguments  
22 that you would like to emphasize?

23 MS. SERANO: The only comment is the case that is  
24 cited by Ms. Betancourt, it predates Paroline, the Sixth  
02:09 25 Circuit case predates Paroline. I think the Sixth Circuit

1     tried to do a decent job in figuring out what the restitution  
2     is before the Supreme Court, but I think we can all agree that  
3     the guidance by the Supreme Court is not extremely helpful as  
4     far as narrowing down the value.

02:09   5             So with that I'll be happy to submit the document --  
6     the information.

7             THE COURT: All right. Anything final?

8             MS. BETANCOURT: Just final, Your Honor, I think at  
9     the last hearing the Court had questioned me as to what the  
02:10   10    value of the actual amounts of restitution are, and I did in my  
11    breakdown indicate that I -- you know, some of these -- some of  
12    my adjusted losses did not account for restitution that had  
13    been collected.

14            But my request for the Court to consider the number of  
02:10   15    restitution orders that have been submitted, it is not so much  
16    for how much has been collected by each of the victims but that  
17    the Court can see that there are other defendants who have been  
18    found to actually possessed that image and then thus ordered to  
19    pay restitution because they possessed that image, so the Court  
02:10   20    can have at least a sense of how many other defendants are  
21    jointly and severally liable, just like Mr. Massa is for the  
22    losses to these victims.

23            THE COURT: All right. Thank you. I don't have a  
24    sentencing date set in this case; is that correct?

02:10   25            MS. BETANCOURT: That's correct.



1 THE COURT: So how about December 1st?

2 MS. SERANO: Your Honor, I start a trial that day  
3 before Judge Bencivengo. It is absolutely going to go, and it  
4 is going to take two weeks. Is it possible to do it sometime  
02:11 5 this month or next month?

6 THE COURT: Why don't we try --

7 MS. SERANO: Can we do it next Friday? Is that  
8 possible?

9 THE COURT: No, because I need to resolve the  
02:11 10 restitution issue, and I am going to do it by way of written  
11 order.

12 MS. SERANO: Okay.

13 THE COURT: What about November 21st, Friday,  
14 November 21st?

02:11 15 MS. SERANO: That's fine, Your Honor.

16 MS. BETANCOURT: That's fine, Your Honor.

17 THE COURT: All right. I have a trial that week.  
18 I'll try to do it on November 21st at 9:00, and then if  
19 something comes up, maybe I can move it to earlier in the day  
02:11 20 to get it done, or do the sentencing at noontime or something.  
21 So we'll try to get it done on Friday, November 21, at this  
22 point we'll say the time is 9:00.

23 MS. BETANCOURT: At 9:00.

24 THE COURT: And then have you each filed --  
02:12 25 Ms. Betancourt, have you filed all of your sentencing

1 memorandum?

2 MS. BETANCOURT: Yes, Your Honor. There is just one  
3 report that I am going to be filing under seal that I realized  
4 was not, the mental health evaluation that was done for  
02:12 5 Mr. Massa, but my sentencing memorandum was filed in  
6 preparation for the previous hearing.

7 THE COURT: All right. So November 21st -- by the  
8 time you show up on the 21st I will have issued an order on the  
9 restitution. Ms. Serano is going to file that updated  
02:12 10 information on the amount of restitution, and then we should be  
11 ready to go on the 21st.

12 MS. SERANO: Just so we're clear, I am to provide the  
13 Court in a pleading the number or the amount -- the total  
14 amount of restitution that has been ordered or the number of  
02:12 15 defendants for each of these victims?

16 THE COURT: Is both of the information kept? What  
17 information is kept?

18 MS. SERANO: As I said before, it is a self-reporting  
19 list from AUSAs across the country of the case name, the case  
02:13 20 number, the district, what the defendant pled to or was found  
21 guilty of, and the amount of restitution per victim.

22 So I am happy to provide the number of victims -- or  
23 the number of defendants and the total amount of restitution  
24 that has been ordered, but again this would not be inclusive of  
02:13 25 any state court judgments or any other judgment.

1 THE COURT: I understand that your office has provided  
2 me that same information in at least one other case, so why  
3 don't you provide that same information.

4 MS. SERANO: Sure.

02:13 5 THE COURT: Thank you.

6 MS. SERANO: Thank you, Your Honor.

7 When do you want that by? I can do it next week.

8 THE COURT: If you want to take to the end of -- a  
9 week from today --

02:13 10 MS. SERANO: Okay.

11 THE COURT: -- whatever date that would be, the 24th.

12 (Proceedings concluded at 2:13 p.m.)

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14 C-E-R-T-I-F-I-C-A-T-I-O-N

15 I hereby certify that I am a duly appointed, qualified  
16 and acting official Court Reporter for the United States  
17 District Court; that the foregoing is a true and correct  
18 transcript of the proceedings had in the aforementioned cause;  
19 that said transcript is a true and correct transcription of my  
20 stenographic notes; and that the format used herein complies  
21 with the rules and requirements of the United States Judicial  
22 Conference.

23 DATED: January 18, 2015, at San Diego, California.

24 /s/ Melinda S. Settermann

25  
Melinda S. Settermann,  
Registered Professional Reporter  
Certified Realtime Reporter